

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 274 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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NEW RAJPUR MILLS CO. LIMITED

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

NOTICE SERVED for Petitioner  
MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 26/04/99

ORAL JUDGEMENT

#. The following three questions of law arising out of Tribunal's order dated 21.2.1984 has been referred to this court for its opinion at the instance of the assessee the New Rajpur Mills Company Limited:

"1. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the deduction of interest of Rs.2,40,025 paid to I.T. Department u/s 220(2) of the Act is not allowable deduction u/s. 37(1) or u/s. 28?

2. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that bank guarantee commission of Rs.1,33,775 was not admissible as revenue expenditure?

3. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that a sum of Rs.4914 being betterment charges was an expenditure?"

#. The period in consideration 1979-80 since then the assessee company has been ordered to be wound up is and in charge of the Official Liquidator. We have heard the Official Liquidator who is present and learned counsel for the revenue.

#. It has been pointed out that all the questions are now to be decided in consonance with the principles enunciated by this court or the Supreme Court, as the case may be.

#. Answer to question NO.1 is to be answered in the light of decision in CIT v. Ashoka Mills Limited 218 ITR 526 by which it has been held by this court that the assessee is not entitled to deduction of interest paid to the department under Section 222(2) of the Act as allowable expenditure under Section 31 or under Section 28 of the Income Tax Act. Following the aforesaid decision we answer the aforesaid question in affirmative that is in favour of the revenue and against the assessee.

#. Question No. 2 referred to above relates to the allowability of the bank guarantee commission paid to the bank. The revenue has treated it as capital expenditure and has disallowed the deduction claimed by the assessee. It has been pointed out that Supreme court in CIT v. Shivkani Mills Ltd. 227 ITR 465 has held commission paid to the banks for securing bank guarantee is a revenue business expenditure and liable to be allowed as deduction under Section 37 of the Act. Following the aforesaid decision Question NO.2 is answered against the revenue and in favour of the assessee.

#. Question No.3 concerns the nature of betterment charges whether the same are capital or revenue. It has been held by the Supreme Court in Arvind Mills v. CIT 197 ITR 422 that the betterment charges are capital in nature. Accordingly such charges are not allowable as expenditure under Section 37.

#. We accordingly answer Question No.3 in affirmative that is to say in favour of revenue and against the assessee.

Accordingly this reference stands disposed of.

There shall be no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)